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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

DOCKET FILE COPY ORIGINAL

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Rural Cellular Association ("RCA"), in response to the Commission's Public Notice,¹ hereby submits its opposition to the Petitions for Reconsideration filed by the National Wireless Resellers Association ("NWRA"), the Cellular Resellers Association ("CRA")² and Connecticut Telephone and Communications System, Inc. ("CTCS") (collectively, "Petitioners"). Petitioners seek the rescission of the five-year sunset on resale obligations of Commercial Mobile Radio Service ("CMRS") providers adopted by the Commission in the First Report and Order (the "Order") in this docket. RCA submits, however, that the Commission's sunset of the resale requirement is consistent with the Commission's statutory authority and represents a sound public policy decision. In support thereof, RCA shows the following:

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to

¹/ Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Rpt. No. 2151, (rel. Sept. 6, 1996).

²/ CRA adopts the position of the National Wireless Resellers Association. CRA Petition for Reconsideration at 2.

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subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. Accordingly, RCA member companies will be affected directly by the outcome of this proceeding; RCA is, therefore, a party in interest.

I. THE COMMISSION'S DECISION IS CONSISTENT WITH THE ACT.

The Commission's cellular (and by extension, CMRS) resale policies are based upon Sections 201(b) and 202(a) of the Communications Act of 1934, as amended (the "Act"), which prohibit unreasonable discrimination by common carriers.³ The specific cellular resale rules were formulated in the era of a market duopoly: only two cellular carrier per market were licensed to provide competitive, facilities-based services. To encourage and promote competition in the availability of cellular service, and also to minimize any competitive disadvantage which might be suffered by the second carrier to enter the market, the Commission, under the statutory authority of Sections 201(b) and 202(a) of the Act, devised specific resale rules to address the market situation.⁴

Petitioners' protests notwithstanding, the Commission's sunset of the specific CMRS resale rules does not repeal the basic obligations of CMRS providers to avoid unreasonable discrimination.

³/ See Cellular Communications Systems, 86 FCC 2d 469, 510-511 (1981); In the Matter of Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Notice of Proposed Rule Making and Order, 6 FCC Rcd 1719 (1991).

⁴/ See 47 C.F.R. § 22.901(e).

Rather, the Commission has recognized that the specific resale rules designed as a substitute for the benefits of competition should be abandoned when the competitive market matures. Where the usefulness and purpose of specific regulations have eroded, Congress requires the Commission to revise its methodology.⁵

Petitioners complain that the Commission impermissibly has departed from established precedent without adequate explanation.⁶ To the contrary, since the very basis for specific resale rules has changed, i.e., the development of a competitive mobile services market, the original rationale for imposition of tailored resale rules has itself evaporated.

In fact, there is nothing novel in the specific application of sunset provisions to the resale rules themselves. In 1992, the Commission relieved facilities-based carriers of resale obligation with respect to competitors upon expiration of the five-year build-out period.⁷ In reaching this conclusion, the Commission reasoned that competition would, in fact, be enhanced by the expiration of resale requirements because carriers would have increased incentive to complete build-out, being unable to rely on the constructed

⁵/ Pub. L. No. 104-104, 110 Stat. 56, § 402, codified at 47 U.S.C. § 11(a)(1) and (2) (1996) (the Commission shall review all regulations and "shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.") (emphasis supplied).

⁶/ See, e.g., Petition for Reconsideration filed by NWRA at 13; Petition for Reconsideration filed by CTCS at 6.

⁷/ In the Matter of Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006, 4008-09 (1992).

facilities of competitors. Consequently, the latest decision is best characterized as an evolution in, rather than a departure from, regulatory policy, being based upon the maturation and growth of the mobile services marketplace.

II. THE COMMISSION'S DECISION IS CONSISTENT WITH THE PUBLIC INTEREST.

The public interest is served where a competitive market is allowed to function efficiently, without the distortion of pricing signals which results from regulated supply. As the Commission has recognized, where competition operates to provide the protections afforded by consumer choice, unnecessary regulations impede market efficiency and impose needless costs on both suppliers and consumers.

At the conclusion of the current broadband Personal Communications Service ("PCS") auctions, consumers will have access to as many as eight different facilities-based providers of interconnected mobile services. The market clearly will be competitive and, therefore, capable of policing itself. A distinct resale policy to promote competition will, therefore, no longer be required to protect the public interest because the market itself will assume that function. Carriers will, however, remain subject to the Act's prohibition of unreasonably discriminatory treatment.

Under these conditions, it is, moreover, likely that resellers will continue to play a role in the provision of services to the public. In fact, the ability of resellers to compete with facilities-based carriers may well be enhanced by the entry of additional capacity suppliers into the market. Resellers will have

a broader choice among underlying carriers, which remain subject to the Act's prohibition against unreasonable discrimination.

Moreover, competitive facilities-based carriers will have the incentive to maximize utilization of their facilities. Carriers will be encouraged by both regulatory requirements and the marketplace to construct facilities to their competitive advantage. This impetus will be particularly crucial in rural areas which could otherwise remain unserved under the PCS build-out requirements. With the advent of even more vigorous competition, carriers will be prompted to attract reseller-customers with perhaps even more advantageous terms than are currently available.

III. CONCLUSION

The Commission's decision to sunset specific CMRS resale provisions is consistent with the Act and the public interest. This decision represents a logical progression in regulatory treatment in response to changes in the marketplace. Accordingly, RCA respectfully requests the subject Petitions for Reconsideration be denied.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

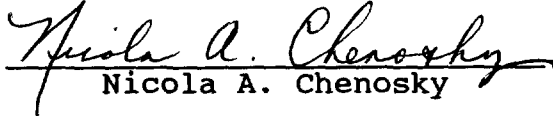
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September 27, 1996

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, hereby certify that on the 27th day of September 1996, a copy of the attached **Opposition to Petitions for Reconsideration** was mailed to the parties listed below:


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